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CURRENT TOPICS

Payments under the New Planning Act

AN announcement by the Ministry of Housing and Local Government and the Central Land Board states that forms of application for payments under the Town and Country Planning Act, 1954, and an explanatory leaflet may now be obtained from the councils of county boroughs, boroughs and urban and rural districts. The forms should be completed and returned to the council offices from 1st January onwards. The persons eligible to apply for payments are those who hold established claims on the fund of £300m. under the Act of 1947 and have sustained loss of development value through the imposition of planning restrictions or in a variety of other ways. The main types of payment will be to (i) claim-holders who paid development charge on the land to which the claim relates; (ii) claim-holders who sold land privately at a price which did not include the full development value, as measured by the amount of the claim, before 18th November, 1952, when development charge was abolished; (iii) claim-holders who sold land which is the subject of a claim to a public authority at its existing use value; (iv) claim-holders who bought their claims without the land to which they relate before 18th November, 1952. This is not an exhaustive list, but it covers the four main types of case with which the Central Land Board will deal. People who do not hold established claims cannot benefit unless they bought land at a price above existing use value from a person who retained the claim, and the land has since been bought at its existing use value by a public authority, or the development of it was the subject of a development charge. More detailed information is given in an explanatory leaflet (Form U.1/A) which can be obtained from any office of the Central Land Board. The Board have sent forms of application for payments to those claim-holders whom, on the information at present available, they have been able to identify as having paid a development charge or as having sold their land to a public authority. Any person, however, who thinks that he is entitled to a payment in respect of any event occurring before 1st January, 1955, other than a planning restriction, and has not before that date received an application form from the Board should ask them for one without delay.

Chancery Practice Directions

CHANCERY Practice Directions issued in substitution for those printed at 98 SOL. J. 758, which implemented certain recommendations of the Evershed Committee on Supreme Court Practice and Procedure, will be found at p. 11 of this issue. The directions relate to *ex parte* applications, office copies of affidavits and the redemption and foreclosure of mortgaged property, and what is substituted in the new directions is a new para. 3 (1), in which the purpose and working of the direction appear more clearly than in the replaced paragraph.

Relief from Double Estate Duty: South Africa

AN agreement has been signed in Pretoria between the United Kingdom and the Union of South Africa amending the agreement of 1946 relating to relief from double estate duty

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(S.R. & O., 1947, No. 314), states an Inland Revenue announcement. The 1946 agreement contains a code of rules for determining the situs of property for estate duty purposes. The new agreement provides, in relation to deaths occurring on or after 1st January, 1952, that this code shall not be applied where the effect of applying it would be to bring within either country's charge to duty property which, apart from the code, would be outside the charge of the country in question. In practice, only the United Kingdom has applied the code in such circumstances. The main effect of the amending agreement in the cases affected will accordingly be to eliminate a charge to British duty and, according to the circumstances, either to restore a charge to Union duty or to increase a charge to Union duty which was previously reduced by credit for British duty. In certain very exceptional circumstances, a charge to Union duty may be restored where under the 1946 agreement no duty was payable in either country (because the British charge was negatived by some specific exemption, e.g., the ordinary exemption limit). The Union authorities have indicated that while they are not aware of such exceptional cases having arisen, if any such case should come to notice, they do not propose to enforce the restored charge where the relevant death occurred between 1st January, 1952, and the date on which the amending agreement is brought into force in the two countries. The United Kingdom has given similar assurances in regard to the converse case, if it should arise.

The Road Traffic Bill

A VARIETY of opinions were expressed on the second reading in the House of Lords on 21st December, 1954, of the Road Traffic Bill, from the Government's view, put by the Paymaster-General (the EARL OF SELKIRK), that the Bill contains important proposals, to LORD BRABAZON'S view that it " lacks imagination " and is " reactionary and unintelligible." LORD MANCROFT admitted that the Bill was a modest one, but it emphasised for the first time that " pedestrians and cyclists must be included as part of the traffic " and made new provisions about vehicle testing and parking meters. The Pedestrians' Association for Road Safety circularised members of both Houses prior to the debate with a detailed memorandum of its recommendations for more disqualifications for driving offences, the increase of monetary penalties to bring them into line with the altered value of money, a periodical review of road safety law, and a number of other matters. The views of the Association did not receive much expression in the course of the debate, but its criticisms of the Bill, that it seeks to remedy comparatively minor legal defects and is inadequate to cope with the present problem of road accidents, received some confirmation in the Paymaster-General's statement that the Government would welcome criticism, and in Lord Mancroft's remark that the House would have plenty of time before 15th February, when the committee stage would be taken, to think again on the subjects that had been raised. Perhaps they will think again of Lord Mancroft's further observation, that that day he had heard mostly the motorists' point of view.

Sir Carleton Allen and Administrative Appeals

MOST lawyers will consider Sir CARLETON ALLEN'S argument in his letter to *The Times* of 18th December in favour of an appellate administrative tribunal to be unanswerable. Referring to the Northumberland Compensation Tribunal case, in which it was laid down that if an administrative tribunal gave reasons for its decision the result was a " speaking order " which, within certain limits, could be reviewed on its merits by the Queen's Bench Division, Sir Carleton wrote that since the Lord Chief Justice had in that case expressed the hope that tribunals in future would give reasons and so provide a means of appeal by certiorari, reasons for decisions had been increasingly given. He argued that it was most unsatisfactory that appeal by this recourse should be at the option of a subordinate judicial authority and that the time had come for the implementation of the recommendation in the report of the Donoughmore Committee that there should be uniformity in this vital matter. There is some hope of the law being soon amended in this respect, for a Private Members' Bill called the Liberty of the Subject Bill has been set down for second reading on 4th March, 1955. It is described as a Bill to extend the rights of appeal to the courts of law against certain administrative decisions and the decisions of certain tribunals.

The First Blind Woman Solicitor

WHEN one bears in mind that out of 418 candidates for the Final Examination of The Law Society in November only 241 passed, the achievement of Miss PATRICIA MARY COLLINS HART, of Sittingbourne, who is the first blind woman to qualify as a solicitor, appears all the more courageous and admirable. Whatever they may forget of their work for the Final, solicitors remember for a long time the arduous nature of the ordeal that it represents. The handicap of blindness would seem to call forth the utmost in resolution from those whom it afflicts. A similar success was achieved by Miss EVELYN ROSE HARDIMAN, who received the degree of LL.B. with honours at Birmingham University in 1948 (see 92 SOL. J. 365) notwithstanding her blindness, and there are of course men solicitors who have overcome their handicap. We offer Miss Hart our sincere congratulations. She has a B.A. honours degree of London University, and has stated that she intends to enter general practice in London.

Business in the Queen's Bench Division

BEFORE the Court of Criminal Appeal rose on 20th December, 1954, the LORD CHIEF JUSTICE made some corrections of what he described as perfectly fair criticisms of the state of business in the Queen's Bench Division. He said that on the opening of the term 2,075 non-jury cases were in the list and waiting for trial. Of those, 799 had been disposed of during the sittings. There were now waiting trial 1,602, a remarkable reduction, and of those 112 were standing out at the request of the parties, so that there were fewer than 1,500 effective cases. That had been done with the help of some of his Chancery brethren and with the help, too, of two lords justices. The time lag between the setting down and the hearing had been reduced by one and a half months. Some four or five years ago he had given directions that if the parties were ready for trial they could bring a certificate of readiness to the Clerk of the Lists, and then the cases were starred and arrangements were made to hear them at an early date irrespective of their place in the full list. He doubted whether fifty cases had been starred in the time since that had been in existence. His lordship also gave details of the present position at assizes, which, he said, was better than it was.

The High Court of Chivalry

THE Earl Marshal (the DUKE OF NORFOLK) and the Surrogate (LORD GODDARD), with the Officers at Arms (Rouge Dragon, Lancaster, York, Bluemantle, Somerset and Chester), sat in the High Court of Chivalry which heard and determined on 21st December, 1954, the action of the Lord Mayor, Aldermen and Citizens of Manchester against the Manchester Palace of Varieties (*The Times*, 22nd December, 1954). For the first

time for 223 years, before the colourful assembly of heralds, pursuivants, judges and registrars, there were re-enacted the ancient ceremonies preceding the trial of the plaintiffs' libel that the defendants had "publicly before many worthy persons displayed on a pelmet above the main curtain in their auditorium without the leave or licence and contrary to the will of the plaintiffs" representations of the plaintiffs' arms, crest, motto and supporters, and had also displayed the same representations on their common seal "contrary to the laws and customs of arms." Judgment was entered for the plaintiffs and reasons will be given at a later date.

The Late Professor Jolowicz

THE news of the death of Dr. HERBERT FELIX JOLOWICZ on 19th December, 1954, at the age of 64, was received with sadness by his many ex-pupils in both branches of the legal profession. After obtaining first-class honours in the Classical Tripos, Part I, and in the Law Tripos, Part I, at Trinity College, Cambridge, he served during the 1914–18 war in Gallipoli, Egypt and France. In 1919 he was called to the Bar by the Inner Temple, and in the following year he became All Souls Reader in Roman Law. From 1931 to 1938 he was Professor of Roman Law at the University of London and Dean of the Faculty of Law in 1937. During the last war he served in the Intelligence Corps, and in 1948 he succeeded Professor de Zulueta as Regius Professor of Civil Law in the University of Oxford. He was a man of great teaching ability and of considerable charm and modesty, and will be missed by a large circle of friends.

Friendly Societies

THE Industrial Assurance Commissioner, in his annual report for 1953 (H.M. Stationery Office, 3s. 6d.), wrote, with regard to the first actuarial survey of companies and societies to be published since the report of the commissioner for 1936, that the main feature which arose from a comparison between 1936 and 1953 was the large increase in the volume of endowment assurance business, more than six times its former amount in the case of the societies and more than three times in the case of the companies. In the interval the total number of industrial assurances in force increased by approximately 30m., the aggregate sums assured by £1,347m., and funds by £536m. Some of the smaller friendly societies had accumulated surpluses since 1936 which were unduly large in relation to liabilities. He added that where this was the case the governing body of the society, acting on the advice of the actuary, should take steps to dispose of a suitable portion of the surplus by way of additional benefits or of reductions of contributions, or both. In many societies substantial allocations of surplus had been made to members. At the end of 1953 there were 121,502,000 policies in force, a decrease of 435,000 on the previous year's figure. Policy-holders paid a record sum of £143,065,000 in premiums, £5,460,000 more than in 1952. During the year £34,330,000 was paid in claims on deaths and £34,578,000 on maturity of endowments.

A Veteran Interviewed

THAT most delightfully human broadcasting character, Mr. WILFRED PICKLES, last week briefly interviewed Mr. FRANCIS STEPHEN ROBINSON, a solicitor, who said that he was given to believe that he was 92. Mr. Robinson was at one time town clerk of Saffron Walden, where the interview took place, and later was town clerk of Greenwich for twenty years. Since he retired he had occasionally helped a friend with his practice in London, but, he said, he "had not done much harm." He had been a solicitor since 1923. His only infirmity, apart from the need to use spectacles while reading and to use a hearing aid, which latter did not appear to be necessary, was an injury which made him need a walking stick when he got his thigh "smashed up in an argument with a lorry while riding a bicycle." The ovation accorded him by the audience, which consisted of a large number of the inhabitants of Saffron Walden, indicated both the personal popularity of the recipient and the absence of any kind of unpopularity for his profession—if anything, the reverse.

Taxation

THE FINANCE ACT, 1954, AND CONTROLLED COMPANIES

AN article in the issue of 1st May, 1954, 98 SOL. J. 292, on "The Finance Bill, 1954, and Estate Duty," made no attempt to deal with the amendments to the Finance Act, 1940, concerning the thorny subject of estate duty in relation to the shares or debentures of controlled companies. Whilst this is a complex subject which is difficult to summarise usefully, it is thought that some outline of the alterations brought about by the Finance Act, 1954, may be useful.

THE INCOME TAX ACT, 1952, PT. IX

It will be recalled that before a company can be considered eligible to come within the scope of the Finance Act, 1940, Pt. IV, it is necessary that it should be one which is or has been under the control or deemed to be under the control of not more than five persons for the purposes of the Income Tax Act, 1952, Pt. IX—the legislation dealing with sur-tax directions—bearing in mind always that certain exceptions in that part of the Income Tax Act, 1952, which are concerned with companies in which the public have an interest do not apply for estate duty purposes.

In determining whether a company is to be regarded as being under the control of five or fewer persons, it is provided that persons who are relatives of each other (by which is meant husbands, wives, ancestors, lineal descendants, brothers or sisters); nominees and beneficial owners; partners; fellow beneficiaries under a trust or deceased estate; are in each case to be regarded as one person. When this provision has been applied to any given case it will often be found, particularly in the case of "family businesses," that a very large number of actual persons will reduce to a very small number of what may be termed "composite persons."

A company is deemed to be under the control of not more than five persons if—

any five or fewer such "composite persons" together exercise, or are able to exercise, or are entitled to acquire, control over the company's affairs, and in particular if they possess or are entitled to acquire the greater part of the share capital or the voting power of the company;

any five or fewer such "composite persons" together possess or can acquire either the majority of the issued share capital or such part thereof as would, if the income of the company were in fact distributed to its members

(i.e., divided " up to the hilt ") entitle them to receive the greater part of the amount so distributed ;

on the assumption that the company is within the section, more than half its income could be apportioned under s. 245 of the Income Tax Act, 1952, among five or fewer such " composite persons." (This is an entertaining piece of legislation because one has to proceed by assuming that which one is trying to prove.)

Conditions for Asset Valuation

When a company is found to be within the above test it is necessary to see whether or not it is within the scope of the Finance Act, 1940, s. 55. Before the latest amendments there were four tests and if any one of these was satisfied then the shares passing upon the death of the deceased fell to be valued according to the provisions of s. 55—that is to say, on " assets " method of valuation. Those four tests were whether or not the deceased at any time within five years of his death had :—

(1) Control of the powers of voting on all questions or on any particular question which if exercised would have yielded a majority of the votes (Finance Act, 1940, s. 55 (1)(*a*) and s. 55 (3) (*a*)).

(2) Capacity to exercise or control the exercise of . . . the powers of the board of directors or of a governing director, powers to nominate the majority of the directors or a governing director, powers to veto the appointment of a director or powers of a like nature (Finance Act, 1940, s. 55 (3) (*b*)).

(3) Been in beneficial enjoyment of more than half the total dividends or debenture interest for the period in question (Finance Act, 1940, s. 55 (1) (*b*)). Provision was made to include interest and declared dividends which the deceased might have received but did not (ss. 47 and 48, *ibid.*).

(4) Been in beneficial enjoyment of half the issued capital or debentures of the company if, but only if, no one other person had at that time control of the company (Finance Act, 1940, s. 55 (1) (*c*)).

Under the 1954 Act the position under test 1 above remains unaltered, but there are considerable amendments in the other three tests. The original provisions relating to capacity to exercise control or to beneficial enjoyment of dividends or of half or more of the issued capital are in fact repealed, but are re-enacted in substance. The old Finance Act, 1940, s. 55 (3) (*b*), is to be found in the 1954 Act at ss. 29 (2) and 31 (1) (*e*) ; the old s. 55 (1) (*b*) is to be found in s. 29 (3) ; the old s. 55 (1) (*c*), slightly amended, is to be found in s. 29 (4). There are, however, two important differences in the case of deaths after 30th July, 1954.

The first is that in the case of test 2 (powers equivalent to control) and in the case of test 3 (beneficial enjoyment of more than half the dividends or interest) it is now necessary in order to bring about an assets valuation that the powers or the beneficial enjoyment as the case may be must have been enjoyed for a continuous period of two years falling wholly within the five years ending with the death. This is not so in the case of test 4, where it is sufficient if it has been fulfilled for any period of time within the five years.

The second is that the new tests 2, 3 or 4 will not produce an assets valuation unless certain additional criteria are satisfied. Those conditions are to be found in the 1954 Act, s. 29 (5), and are that :—

(*a*) Immediately after the death a person having control or powers equivalent to control of the company either alone or in conjunction with his relatives has a beneficial interest in possession in the relevant shares or debentures. " Relative " is defined by the Finance Act, 1954, s. 31 (1) (*d*), as being a husband, wife, ancestor, lineal descendant, brother or sister.

(*b*) Immediately before and after the death shares or debentures are held by trustees who have control of the company by virtue of shares or debentures so held.

There is a third condition in the case of shares or debentures which are deemed to pass as gifts *inter vivos* or by reason of the Finance Act, 1940, s. 43. In that case there will be an " assets " valuation if, immediately after the death or at any previous time since the gift or the disposition or determination as the case may be, the donee or person becoming entitled by virtue of or upon the disposition or determination had control or powers equivalent to control either alone or in conjunction with relatives.

The general position is, therefore, that if the deceased had actual control then shares passing on his death fall to be valued under the provisions of the Finance Act, 1940, s. 55. If, however, he did not have actual control but only satisfied tests 2, 3 or 4 above, then shares only fall to be valued under the provisions of s. 55 of the 1940 Act if in addition one of the subsidiary tests (*a*) and (*b*) or that relating to gifts *inter vivos* above are satisfied. It is to be noticed that in one case, where the assets valuation is brought about by reason of the fact that the shares or debentures concerned are held by trustees having control by virtue of their trust holdings, it may well be that only those shares in the hands of the trustee, and not the whole of the deceased's holdings, fall to be valued on the assets basis.

It will be observed that for the purposes of the subsidiary tests it is important to determine who may have control of the company immediately after the death of the deceased, and some special directions for determining this are to be found in the Finance Act, 1954, s. 31 (3), which provides that in determining whether a person at any time has or had " control of a company either alone or in conjunction with his relatives " or a " beneficial interest in possession " in any shares or debentures :—

(i) Where any relevant person is or was at any time entitled under a trust to not less than nine-tenths of the income arising from the shares or debentures that person is treated as being or having been able to control the exercise by the trustees of any powers attached to the shares or debentures.

(ii) The shares or debentures which form part of a person's estate at his death are to be treated for this purpose as vesting immediately in the persons entitled under his will or intestacy. It is clear that in many cases without some provision of that sort no one would have control, since the shares or debentures would be vested in the personal representatives, who would have no voting powers.

(iii) Any limited interest in any shares or debentures of the company and any voting rights attached to preference shares which do not materially affect the effective control of the company's affairs are to be disregarded in so far as the Commissioners of Inland Revenue so direct. This appears to be a thoroughly objectionable provision on all grounds.

Subsidiary Reliefs

All the matters discussed above have been concerned with whether or not the " assets " method of valuation is to be applied in any given case. The Finance Act, 1954, s. 30,

provides four different forms of relief which may apply when it has been in fact established that the " assets " valuation is appropriate.

Sales within three years following the death

Finance Act, 1954, s. 30 (1)

One of the most onerous features of the " assets " valuation has always been that whilst estate duty is chargeable upon the valuation so found yet it is frequently impossible to sell the shares for anything approaching that figure. A striking example of the operation of the " assets " valuation is to be found in *Re Hall's Settlement* [1954] 3 W.L.R. 675 ; 98 SOL. J. 788 where the valuation under the Finance Act, 1940, s. 55, amounted to £90 10s. per share and the valuation upon the normal principal of market value under the Finance Act, 1894, s. 7 (5), that is to say what the shares might be expected to bring on a sale in the open market, amounted to no more than £22 10s. per share. In such circumstances if the bulk of the deceased's estate takes the form of shares in such a company it is almost invariably rendered insolvent. To meet this it is provided that if shares which have been subject to valuation under the Finance Act, 1940, s. 55, are sold in certain circumstances detailed below the sale price is to be substituted for the original valuation for estate duty purposes and the difference in duty is to be repaid by the Crown. The relevant conditions are :—

(1) The sale must take place within three years of the death.

(2) The vendor must be either a person accountable for the duty payable on the death, that is to say, in most cases, either a personal representative or a donee under a gift *inter vivos*, or must be a person to whom the shares and debentures pass on the death.

(3) Neither the vendor nor any person interested in the proceeds of sale of the shares must be a relative of the purchaser or of any person interested in the purchase. As before, " relative " is defined by the Finance Act, 1954, s. 31 (1) (*d*).

(4) The sale must be made at arm's length for a price freely negotiated at the time of sale. Some care should be exercised with regard to this condition. Frequently it is provided by the articles of association of a private company that on the death of a member other members may have an option to take over his or her shares at their then market value as certified by the company's auditors for the time being. Whilst this seems to be within the spirit of the present provision, it is difficult to say that such a price is freely negotiated at the time of sale. On the other hand, a mere option to take over the shares at a price to be agreed at, or within a specified time of, the date of death is entirely valueless unless there is some means of fixing the price which is to be paid in case of deadlock.

(5) The price obtained must, of course, be less than the valuation made under the Finance Act, 1940, s. 55. Account, however, is to be taken of any change of circumstances between the dates of death and of sale. This last provision can, of course, operate for the protection for either the Crown or the taxpayer.

Gifts inter vivos

Finance Act, 1954, s. 30 (2)

Although there is pending an appeal to the House of Lords (see *Re Hall's Settlement, supra*) on the question of whether shares or debentures which are deemed to pass on a gift *inter vivos* are properly to be valued in accordance with the Finance Act, 1940, s. 55, it has up to now been thought, and has in fact been held by the Court of Appeal, that such shares or debentures do fall to be so valued. Exemption from such an " assets " valuation is now afforded if the following conditions are shown to the satisfaction of the Commissioners of Inland Revenue :—

(1) The shares or debentures were given absolutely to a past or present employee or to the widow or orphan of a past employee of the company in question.

(2) The donee was not a relative of the deceased. As before, " relative " is defined in Finance Act, 1954, s. 31 (1) (*d*).

(3) Possession of the shares was assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the deceased and of any benefit to him by contract or otherwise. This is, of course, the same test that is used in determining whether the ordinary gift *inter vivos* remains chargeable after the lapse of five years.

(4) The donee did not have control or powers equivalent to control of the company either alone or in conjunction with his relatives immediately after the death or at any time since the making of the gift.

Contingent liability for tax

Finance Act, 1954, s. 30 (3)

The Finance Act, 1940, s. 50, provides that in determining the value of the assets of a company allowance is to be made for all liabilities of the company as are therein mentioned. A considerable measure of hardship was disclosed by the case of *Re Duffy* [1949] Ch. 28, where it was held that those liabilities could not include income tax under Case I of Sched. D which became payable by reference to the profits earned during the accounting period within which the death took place. This was so because such tax could not be said to be a liability until such time as it was assessed—which would, of course, be after the end of that period. Accordingly, it is now provided that such contingent liability, including, it would seem, not only income tax but also profits tax, is to be taken into account at an estimated figure. It will not always be possible to take it into account at anything other than an estimated figure, because it is not known what the basis of charge will be in the subsequent periods, but it is to be supposed that it will be estimated by reference to the basis of charge existing when the estimate falls to be made.

Quick succession relief

Finance Act, 1954, s. 30 (4)

Where shares or debentures which would fall to be valued under the Finance Act, 1940, s. 55, have also fallen to be so valued on a previous death within five years, it is now provided that for the purposes of quick succession relief those shares or debentures shall be treated in the same way as an interest in land or in a business not carried on by a company to the extent that on both deaths their value is wholly or partly attributable to the value of land of the company or of its subsidiary company or companies, or to the value of assets used by the company or its subsidiary company or companies in business other than a business consisting mainly in the holding of or dealing in investments other than land.

Alterations in capital

Finance Act, 1954, s. 30 (5)

It is in effect provided that the above-mentioned provisions relating to sales within three years of the death or to quick succession relief shall not be lost by reason of the shares having been sub-divided or consolidated, and it is also provided that the issue of fully-paid bonus shares shall, for this purpose, be regarded as a sub-division.

G. B. G.

A Conveyancer's Diary

1954

FROM the point of view from which this Diary is written the past year has certainly been the most uneventful since the war. The conveyancer's art in the narrowest sense—that is, the art of drawing documents for the purpose of transferring rights in property from one person to another—has not, I think, been deeply affected by any case which has been reported, or by any statute which has become law, in the course of 1954. Perhaps the most interesting thing to record in this connection is not something which has happened but something which has confounded the prophets of a year or two back by not happening. I refer to the widespread reluctance to use the new kind of contract for the sale of land which appears (as an alternative to the familiar kind of contract) in some of the widely used printed forms of contract for the sale of land.

The ingenuity which went to the devising of this new form of contract must now be dismissed as largely mis-spent effort, but that is hardly the fault of those who devoted their mental energies to it. The reason for a change in the old-established practice in this respect was a potent one. In the seller's market after the war, in which most types of accommodation were, as they used to say, in short supply, and pretty well every kind of residential accommodation had only to be put up for sale to attract offers of purchase by the score, a practice grew up among purchasers of going back on their offers before contracts could be prepared and exchanged, presumably because in the interval they found some good reason to make them repent of their bargains. Undoubtedly certain persons would enter into an understanding to purchase too light-heartedly, to be brought to a sense of reality only after a visit to a building society and a computation of the instalments needed to complete the purchase. Of course, some vendors were luckier than others and obtained a binding agreement from their purchasers at once, but the usual practice of entering into a conditional agreement only at the outset, a practice advised by many estate agents, favoured the purchaser, and the length of time needed by a busy solicitor to make all the necessary pre-contract inquiries tended to the same result.

To make it possible for a contract, binding initially but subject to avoidance in the event of what were under the old practice preliminary inquiries producing certain specified and unsatisfactory results, to be entered into at the earliest possible date after the purchaser had expressed his willingness to purchase, but still to permit the purchaser to resile for good cause shown, seemed the solution to this difficult problem. But unless the vendor makes it an initial and binding condition of sale that the purchaser shall enter into such a contract within a short space of time, the new practice cannot be made to work. If the seller's market in real property had continued, doubtless vendors would have had the courage to insist on this; but just about the time when the new forms were made available for use the market turned against the vendor, and the purchaser is now able in most cases to lay down his own terms as to the kind of contract which he will sign. If the purchaser is being advised by a solicitor on the form of contract, there is, of course, only one kind of advice which he will receive—to defer the exchange of contracts until all the preliminary inquiries (in this context, properly so called) have been made, and then to sign only if the answers can be regarded as satisfactory. And so, with numerous deletions in ink, contracts on the new forms conform in all essentials to the old model.

In saying that the conveyancer's art has not been considerably affected by any reported decision in the past year I have not forgotten *Church of England Building Society* v. *Piskor* [1954] 2 W.L.R. 952; 98 SOL. J. 316, but that decision only confirmed the view which caution had previously prompted. Moreover, as readers of this Diary will recall, there are methods available which are not difficult to put into practice and which, if adopted, should have the desired effect of protecting a mortgagee completely from the claims of third parties to a tenancy of the mortgaged property arising out of an unauthorised grant of a tenancy by the mortgagor (see 98 SOL. J. 482).

Passing from the law relating to the transfer of property to the law relating to trusts, two or three decisions of some importance may be recorded here. The first is *Re Koettgen's Will Trusts* [1954] 2 W.L.R. 166; 98 SOL. J. 78, in which a trust for the benefit of a restricted class of persons was upheld as a valid charitable trust, the restrictions being imposed by the settlor not absolutely but subject to the discretion of trustees. This decision is interesting because of the possibilities it opens up to settlors who have the courage to follow it of erecting what may for all practical purposes be private trusts in the shape of public or charitable trusts, with all the advantages which the status of a charitable trust brings with it both for the purpose of the perpetuity rule and the purpose of reducing taxation. The mention of taxation immediately calls to mind *Chapman* v. *Chapman* [1954] A.C. 429; 98 SOL. J. 246, which still stands as inflexibly as on the day on which it was decided in the way of all those kinds of schemes for reducing or avoiding the effect of estate duty on settled property which before that day constituted almost a major industry in Lincoln's Inn. Those schemes, of course, attempted (often with success) to cure certain defects in settlements executed in the days before taxation had reached its present level; nowadays, if settlements are drawn at all, the main preoccupation of the draftsman is to avoid situations in which tax or duty become payable or at any rate reduce their incidence to the lowest possible level. This preoccupation is evidenced by the appearance in the last year or so of at least three books principally concerned with the effect of taxation on various schemes of disposition of property, one of them supplying precedents for the use of the draftsman.

Two other cases bearing on trusts are *Re Churston Settled Estates* [1954] 2 W.L.R. 386; 98 SOL. J. 178, and *Re Murray* [1954] 3 W.L.R. 521; 98 SOL. J. 716. The first of these decided, shortly, that a power of appointment exercisable jointly cannot be a general power. This decision has been widely criticised, and certainly it runs counter to the views of conveyancers on which the provisions of innumerable family settlements have been founded in the past. Doubtless, its soundness will shortly be tested in a higher court. The other gave what many will hope to have been the *coup de grâce* to that hoary survival from the days when people had more family pride than they do now (not, perhaps, necessarily a bad thing) and liked to make a parade of it—the name and arms clause. (It is possibly still practicable, even to-day, to frame a name and arms clause which will be effective, but if the attempt is to be made the old precedents in the books are not a firm foundation on which to build.)

That brings me to the last broad division of this review, the statute law of the past year. The Landlord and Tenant

Act and the Housing Repairs and Rents Act are of first-class importance to most owners of real property, but in the pages of this Journal these two Acts fall, fortunately for me, in the neighbouring territory of the "Landlord and Tenant Notebook." Apart from these two measures there is very little to note. The Charitable Trusts (Validation) Act has passed into law in the form in which it appeared as a Bill, and those of its provisions which I found so difficult to understand when it was in Bill form have not, for me, lost any of their complexity with the passage of time. The Law Reform (Limitation of Actions) Act deals largely with matters outside the scope of this Diary, but its first provision —the abolition of the favoured position hitherto occupied by public authorities in regard to limitations—is general, and greatly to be welcomed. Finally, the Law Reform (Enforcement of Contracts) Act has deprived the Statute of Frauds of all its remaining limbs but one, and that not a very important one. But since the Law of Property Act, 1925, the conveyancer and property lawyer has not in any case had much occasion to consult that historic statute.

That is all that I have found worthy of mention in this review of the year 1954—a very quiet year indeed.

"A B C"

Landlord and Tenant Notebook

INCREASING A STANDARD RENT

RENT tribunals have, since the passing of the Housing Repairs and Rents Act, 1954, had a great deal to do with applications to increase rents determined by pre-1939 lettings on the ground of increased costs of services provided, this task being imposed upon them by s. 40 of the Act. A good many tribunals are being kept busy by such applications. Rather less is being heard of the change brought about by s. 36, which makes determinations of reasonable rent under the Landlord and Tenant (Rent Control) Act, 1949, effective whether the figure arrived at be higher or lower than that fixed by lettings within its scope, i.e., by lettings since 1st September, 1939.

A standard rent is, of course, the essential feature of a controlled tenancy; the primary object of the legislation is to restrict rent, the provisions by which security of tenure is conferred being ancillary to that object. Parliament has sought to achieve its aim by a policy of "freezing"; in *Fowle* v. *Bell* [1947] K.B. 242 (C.A.), Scott, L.J., said that the method of the Legislature was, no doubt, the adoption of some rough criterion of market value and that it was assumed that, at a time when parties were presumably free to negotiate freely in the open market, what they fixed on would be a fair rental. The case was not actually concerned with a question of standard rent, and it would not be fair criticism to say that the learned lord justice's observations overlook *Davies* v. *Warwick* [1943] K.B. 329 (C.A.), in which the court pointed out that a standard rent might be determined by a letting which took place centuries ago.

Under old control, the important date was 3rd August, 1914: if a dwelling-house was let on that date, the rent determined the standard rent; if it was not let on that date, the rent under the last previous letting before 3rd August, if it had been let before, was the standard rent; while in the case of a first letting since the important date, the rent reserved by the tenancy became the standard rent. This rough criterion appears to have satisfied the needs of the situation created by World War I; and when World War II called for further control, the important date was made 1st September, 1939. This second war, however, produced an even more acute housing shortage, and owners of dwelling-houses which had never been let before were, especially when hostilities had ceased, found to be letting them at what were considered fancy rents. This occasioned the passing of the Landlord and Tenant (Rent Control) Act, 1949, s. 1, by which the rent tribunals brought into being by the Furnished Houses (Rent Control) Act, 1946, were empowered, on the application of either landlord or tenant, to fix the reasonable rent of any dwelling-house with a standard rent. If the figure determined was less than that of the rent reserved, the new figure became, as from the date of determination, the standard rent of the house. But if the figure determined exceeded that of the existing standard rent, the latter remained unchanged.

The alteration brought about by the Housing Repairs and Rents Act, 1954, s. 36, is to give effect to increases: the first subsection achieves the main object by simply enacting that the words "is less than" in s. 1 of the Landlord and Tenant (Rent Control) Act, 1949 ("if the rent determined . . . is less than what would be the standard rent apart from this section . . .) be replaced by the words "differs from."

It seems likely that Parliament has realised that while, as mentioned above, World War II occasioned a shortage and thus a "landlords' market," there were periods during the war itself when, in towns much subjected to air attack, accommodation was available at less than reasonable rents. Those who then became tenants can be commended for their bravery; but, since the termination of hostilities, they have had the advantage of paying less than the landlord ought to receive in the way of rent. It is in such cases that landlords might well consider making an application under s. 1 of the 1949 Act.

It is unlikely that any landlords took the trouble to apply for a determination before the 1954 Act came into force: all that they stood to gain was, perhaps, freedom from budgetary anxiety or the satisfaction of curiosity. There are also, no doubt, few cases in which tenants' applications resulted in the determination of a figure exceeding that of the existing standard rent. But, if there be such, the tenant is entitled to not less than four weeks' notice (in the prescribed form) before the increase can take effect.

The new enactment does not say anything about the coming or putting into effect of a determination made since it was passed and the position is presumably governed by what was laid down in *Phillips* v. *Copping* [1935] 1 K.B. 15 (C.A.). In that case it was demonstrated that the obligation to serve a statutory notice applied only when an increase authorised by the Acts was being "imposed," i.e., an increase over the amount of the standard rent.

But, while it has been suggested—in *Re Swanson's Agreement* (1946), 62 T.L.R. 719—that an informal notice increasing rent to, or to less than, the standard rent might operate as a notice to quit, it seems that this notion exaggerates the effect of the Rent Restrictions (Notices of Increase) Act, 1923, for which the dourness of the defendant tenant in *Kerr* v. *Bryde* [1923] A.C. 16 was responsible. He, having been served with a statutory notice of increase while yet a contractual tenant, invoked (perhaps unconsciously) the *pacta sunt servanda* principle and, as the House of Lords held, established that he was not liable for the increase. Whereupon the Legislature passed the statute mentioned—an Act to amend the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, with

respect to the effect of notices to increase rent given thereunder; and for purposes consequential thereon. The purposes consequential thereon included the validating as notices to quit of notices of increase given in the past, if they "would have been effective," etc.; but the notices to increase rent given thereunder would not, I submit, include a notice or demand for an increase up to the amount of the standard rent.

The point is not a purely academic one; for while, in the event of a rent tribunal reducing standard rent, the reduction takes effect automatically (s. 1 of the 1920 Act shows us what all this legislation is about when it says "if the increased rent . . . exceed by more than the amount permitted under this Act the standard rent . . . the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant . . ."), a landlord who (if I may use the expression) obtains an increase cannot, as far as I can see, expect the tenant to add it to the next payment of rent. And it also follows, in my submission, that, whatever happened to *Kerr* v. *Bryde*, there can be no increase before the existing tenancy is determined. Consequently, that any landlord who granted a long fixed term of controlled premises commencing before 30th August, 1954, will derive no benefit from an application under s. 36 of the Housing Repairs and Rents Act, 1954, till that term expires. It is true that legislation shows an increasing propensity to ride roughshod over agreements, retrospectively as well as prospectively: the Rent Restrictions (Notices of Increase) Act, 1923, was one example; the Landlord and Tenant Act, 1954, Pt. II, "continues" tenancies which would have determined in accordance with notices to quit current on 1st October, 1954; and the Housing Repairs and Rents Act, 1954, itself provides for one kind of increase—the repairs increase of Pt. II—to take effect during the currency of a contractual tenancy. But there is no counterpart to the "is let under a controlled tenancy or occupied by a statutory tenant" of s. 23 (1) in s. 36.

R. B.

HERE AND THERE

TEN YEARS AFTER

INDUSTRIOUS in spite of ourselves, here we are publishing the first number on the very first day of the New Year. This year of 1955 provides those of us who are decimal minded with a platform or viewpoint from which to look back on the past ten years of what, for want of a worse word, we have got used to calling national and international peace. All over London and the great cities there are still bomb sites in plenty, wild, overgrown and full of tumbled rubble, where ten-year-olds play adventurously, for whom bombs are a mere matter of hearsay, almost as remote as folklore. When rehabilitation has gone so slowly all over the country, no one need be much surprised that the law, proverbially so deliberate in its processes, should have gone no faster than anyone else. But now it rather looks as if it will have finished putting all its houses in order well before the practical, hard-headed, go-to-it business men of the City of London have put all theirs. So ten years after, come for a tour of inspection round the legal quarter to see how things are getting along. The Law Society building and the Record Office opposite escaped substantial damage. Surprisingly, considering its enormous sprawl, the Law Courts, to all intents and purposes, remained disappointingly immune. The Chancery court, which had its corridor wall blown out, still remains patched pending complete restoration. The north end of the Divorce block still stands jaggedly incomplete. The gap which a flying bomb knocked in Bankruptcy Buildings early one morning is still unfilled, despite the boom in bankruptcies lately so eloquently applauded by the *Daily Express* as "all to the national good," since it is "a sign of growing competition," a return to an era in which "the inefficient must go under and the resourceful survive." Perhaps Lord Beaverbrook would like to endow the rebuilding as other rich and successful men have endowed libraries and educational institutions. On the hypothesis cited above few experiences in life can be so profitably stimulating as a good bankruptcy.

ALMOST AS BEFORE

CHEERED by these heartening reflections, we cross Carey Street into Lincoln's Inn. A stranger who had not been here since August, 1939, would imagine that the air raids had literally passed it by. There is nothing very startling about the still apparent newness of the extensively renovated building at the north-west corner of New Square, and very soon it will tone in with its neighbours and be indistinguishable from them. Only a very careful scrutiny can now reveal where a piece was blown out of Stone Buildings on the garden side, nor does the passer-by guess at that other rather eccentric damage elsewhere in the Buildings when a small bomb scooped a large hole in the ground floor and first floor, leaving the second floor suspended above like a bridge. A good deal of the north-west part of Stone Buildings was burnt out, but the shell has been filled and the internal improvements are not perceptible from the outside. The grille gate into Chancery Lane was considerably shaken, largely, it is said, by the over-enthusiastic use of explosives in demolishing raid ruins opposite. It is now being repaired. The reconstructions in Old Buildings and the forthcoming re-roofing of the new Hall are to be attributed mainly to wear and tear in the normal processes of time, with a little shaking up by blast to help them on. So for posterity the principal monument to the disasters of war to be found in Lincoln's Inn will still be that unobtrusive little plaque by the headquarters of the Inns of Court Regiment recording (rather primly, as it now seems to us) how two bombs fell in the roadway during the first World War, shattering windows and doing other material damage. There is reason to believe that Lincoln's Inn owes its relative immunity (as compared with the other Inns of Court) to the particularly efficient organisation of its fire-watchers. Elsewhere there was more courage and goodwill than method and organisation.

WHAT HITLER KNOCKED ABOUT

So the Temple and Gray's Inn were all but incinerated. We saw the Temple Church gutted, the Hall, Library and administrative buildings of the Inner Temple destroyed, along with the Master's House, Crown Office Row, Fig Tree Court, Elm Court, the Cloisters, half of Pump Court, Harcourt Buildings, Lamb Building, between the Church and the Hall, and two houses in King's Bench Walk. On the other side of Middle Temple Lane part of Plowden Buildings disappeared, along with the houses dividing Brick Court from Essex Court. Middle Temple Hall was heavily damaged by fire and high explosive, and the Library was blasted beyond repair. Not all of this damage was catastrophic. The Inner Temple Hall was Victorian Gothic almost at its worst. The Middle Temple Library, described as an unpleasant reminder that Lord Chancellor Westbury had a nephew who was an architect,

followed the same idiom, but though pretentiously medieval was somehow not quite so undistinguished. The gaunt Victorian red brick of Elm Court, of a particularly unpleasing tone, was one of the first casualties of the war and a good riddance in every sense. If the eastern half of Crown Office Row was Charles Lamb's, the western half was typical Smirke. The hands of the Smirke brothers, fashionable and adulated in their day, still lie heavy on the Temple, heaviest of all on the ponderous workhouse gloom of Dr. Johnson's Buildings. Harcourt Buildings was another deep architectural depression which it is much to the credit of the enemy air force to have dissipated. Now the Temple is well on its way back to reconstitution. The gaps in King's Bench Walk have been filled in so long that people have almost forgotten them. Middle Temple Hall has outlived the first delighted wonder of its restoration. The main part of the Temple Church is complete, better than before the fire which purged it of the most terrible Victorian accretions, and work continues in the original round church of the Knights. The new Master's House reproduces in essentials its predecessor. The new Inner Temple Hall, externally finished, boldly shifts from Gothic to Georgian in inspiration. Only when it is open will we be able to judge of the rumours which have suggested that, owing to some misunderstanding, it is a size or two smaller than was intended. At the west end the vaulted chambers, relics of the medieval Temple, have been preserved and brought into a prominence hitherto denied them when they were masked by Fig Tree Court. The Cloisters have been reproduced substantially as they were before but higher, and, to that extent, less charmingly intimate. There is now a blank wall where once there were the windows of a little old shop; this also means a loss of interest for the eye. The new south side of Pump Court might be a lot worse, but it is heavy-handed in conception and a shade too pretentious for the intimacy of that narrow court. Also, quite needlessly, the pump (or, as it had become, the tap) has vanished. Harcourt Buildings is an enormous improvement on its predecessor, and the new buildings below Pump Court happily have nothing in common with pre-war Elm Court. The demolition of the ruins of the Middle Temple Library is far advanced. The temporary library is still in Brick Court, awaiting the new one which will go up in Middle Temple Lane below the Hall.

SQUARING UP GRAY'S

BATTERED Gray's Inn most courageously restored its heart before it attended to anything else, and the rebuilding of its Tudor Hall almost in replica was an astonishing achievement, confirming the continuity of the life of the Society. The new bay window at the south end of the dais, facing, but not matching, the one at the north end, is (rightly, I think) not universally admired. The new Benchers' rooms are externally a tremendous improvement on those burnt in the war, though the ostentatiously exuberant heraldic decoration of one of them has caused some rather sardonic amusement. Since then building has been going on steadily in Gray's Inn Square, and very soon the two great gaps will be filled. Seven of the fourteen houses had vanished, four of them in a row on the garden side. It was decided to rebuild in harmony but not in replica, and, in order to have scope for modernisation, to reduce the four staircases to three. Some doubts were felt about the visual effect of the change, but now that the new buildings are up the result can be judged as very good indeed. Save for one building the east, south and west sides of South Square are still in ruins. The new library will be on the east, but the rest of the square will (or should) present a rather difficult problem. The sole survivor of the eighteenth-century buildings is the very pleasant house where Dickens worked as an office boy (though how he hated it!), and I suppose one can say that of course the guardians of the Inn's traditions will think several times to avoid adopting any final plan which would involve destroying a historic monument which Hitler spared. If they want to see how it could be done the rebuilding of Staple Inn provides a model.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Cheque Endorsement

Sir,—The Chartered Institute of Secretaries is prepared to support an appropriate legislative measure which would abolish the endorsement of cheques paid by the payee into his bank account. The Bill introduced into the House of Commons [21.12.54] purports to do this by creating a legal fiction of endorsement by the stamp of the collecting bank. Amendment such as this of the Bills of Exchange Act, 1882, is not devoid, however, of present and future difficulty; the passage of a Bill through Parliament is not a foregone conclusion; and the legislative solution lacks flexibility, restricts experiment and cannot avoid dependence for its success upon public response.

It should not be overlooked, therefore, that current banking law and practice already provide for the payment of a cheque without endorsement. This suggests that careful consideration should be given to the adoption of ways and means to encourage the general use of "crossed bearer" cheques, instead of "order" cheques. There is involved no alteration in the existing system and, *inter alia*, negotiable cheques would remain available to those whose requirements cannot be met in any other convenient way.

Bearer cheques crossed "not negotiable" obviate endorsement and occasion no loss of protection. The only limitation is that, although freely transferable, they cannot be rendered negotiable. This, however, does not result in appreciable or insurmountable inconvenience, only three cheques in every hundred being negotiated, usually by persons who have no bank accounts to get cash.

Extension of the use of bearer cheques crossed "not negotiable" could be facilitated and expedited (*a*) if it is made clear to the public that such cheques are not the relatively insecure instruments they are erroneously often thought to be; (*b*) if professional and business organisations recommended their use; (*c*) if the large users of cheques set the example; and (*d*) if the banks issued distinctive bearer cheques so crossed, except when otherwise requested by their customers.

It should be added that, as Chairman of the Cheque Endorsement Committee of the Institute, I have received more letters advocating "crossed bearer" cheques than others containing constructive suggestions. The Institute is grateful to all its correspondents, some of whom are your readers.

J. R. W. ALEXANDER,
The Chartered Institute of Secretaries.

London, E.C.4.

On Tuesday, 30th November, 1954, a joint moot was held at University College, London, in the Anatomy Theatre, between the BENTHAM CLUB, which is open to all graduates of the Laws Faculty, and the UNIVERSITY COLLEGE LONDON LAW SOCIETY. The moot concerned a problem in the law of larceny, and Gerrard, J., presided. Mr. A. Goodman, solicitor, and Mr. L. Joseph, barrister-at-law, represented the Bentham Club, and Mr. C. L. Corman and Mr. D. M. Rose appeared on behalf of the students. The annual dinner of the Club will be held on Tuesday, 8th February, 1955, at 7.15 p.m. The presidential address will be delivered by Professor H. G. Hanbury, M.A., D.C.L. Graduates interested in joining the Club are requested to communicate with the Hon. Secretary, The Bentham Club, c/o Faculty of Laws, University College London, Gower Street, W.C.1.

BOOKS RECEIVED

Paterson's Licensing Acts. Sixty-third Edition. By F. MORTON SMITH, B.A., Solicitor, Clerk to the Justices for the City and County of Newcastle-upon-Tyne. 1954. pp. cxi, 1542 and (Index) 240. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £2 17s. 6d. net.

The Law Society's Digest. Volume 1. Conveyancing Practice and Costs. 1954. pp. xl and (with Index) 639. London: The Law Society. £1 5s. net.

Notes on District Registry Practice and Procedure. Ninth Edition. By THOMAS STANWORTH HUMPHREYS. 1954. pp. vi and (with Index) 94. London: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

The Nuffield Foundation. Report on grants made during the ten years April, 1943, to March, 1953. 1954. pp. (with Index) 319. London: The Nuffield Foundation.

Hill & Redman's Law of Landlord and Tenant. Third (Cumulative) Supplement to Eleventh Edition. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law, and Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law. 1954. pp. xxxi, 305 and (Index) 25. London: Butterworth and Co. (Publishers), Ltd. £2 2s. net.

Clerk and Lindsell on Torts. Eleventh Edition. Editors: A. L. ARMITAGE, M.A., LL.B, of the Inner Temple, Barrister-at-Law, G. ELLENBOGEN, M.A., of Gray's Inn, Barrister-at-Law, His Honour Judge CHARLESWORTH, LL.D., of Lincoln's Inn, and T. A. BLANCO WHITE, B.A., of Lincoln's Inn, Barrister-at-Law. 1954. pp. clvi and (with Index) 1097. London: Sweet & Maxwell, Ltd. £4 15s. net.

The Rating and Valuation Association. Report of the proceedings at the 72nd Annual Meeting and Conference. 1954. pp. 132. Published by the Association.

PRACTICE DIRECTIONS

CHANCERY DIVISION

The judges of the Chancery Division have directed that the following Practice Directions shall be substituted for those issued under date 3rd November, 1954 [98 SOL. J. 762]:—

1. EX PARTE APPLICATIONS

Where, by any rule or practice, Orders or Directions may be sought in chambers *ex parte* supported by affidavit, it shall not be necessary to issue a summons for such purpose unless required by the rule under which the application is made or the judge shall otherwise direct.

Examples:

(1) Garnishee order *nisi*.
(2) Change of parties upon devolution of interest.
(3) Appointment of next friend or guardian-*ad-litem* of an infant or person under disability in the stead of such a person who has died.
(4) Substituted service of writ and other process.

2. OFFICE COPIES OF AFFIDAVITS

Unless the court or a judge in any particular instance shall otherwise direct, it shall not be necessary to bespeak for the use of the court or judge office copies of affidavits intended to be filed in connection with interlocutory or procedural matters as distinct from affidavits forming part of the evidence in a suit or dealing with the merits of the case; as to which latter the existing practice shall continue.

Examples where office copies will NOT usually be required:

(1) Of fitness to act as receiver, manager, next friend or guardian-*ad-litem* or guardian of an infant.
(2) Verifying the security of a surety or a receiver's, manager's or guardian's account.
(3) Proving service of process (including notices to prove a claim or the allowance thereof).
(4) In support of applications under Orders VII, r. 4; XIV; XVIII, r. 2; XXXI, r. 19A (3); and LVII, etc.

NOTE.—A more extensive list can be inspected in the Masters' Summons Rooms.

3. REDEMPTION AND FORECLOSURE OF MORTGAGED PROPERTY

(1) In order to make it unnecessary to go to the expense of preparing deeds, powers of attorney and form of receipt to hand over in case a mortgagor should attend to redeem at the time and place appointed by the master's certificate for redemption; all orders for foreclosure or redemption unless the court otherwise directs will provide (i) that the mortgagor shall give seven days' notice of his intention to attend and redeem, and (ii) if no such notice is given but the mortgagor in fact attends at the appointed time and place then at the option of the mortgagee the time for redemption shall be extended for one week. This will give the mortgagee's solicitor time to prepare the necessary documents.

(2) The master's certificate pursuant to an order *nisi* (or the order itself if thereby a certificate is avoided) shall nominate as the place of redemption the office of the mortgagee's solicitors if it be within five miles of the Royal Courts of Justice, Strand, or such other place as may be agreed between the parties and recorded in the order or certificate. In all other cases the place for redemption shall be recorded as Room 138 of the Royal Courts of Justice, Strand, W.C.2.

M. G. WILLMOTT,
Chief Master.

21st December, 1954.

TALKING "SHOP"

PLAIN TALES FROM THE SHELVES—I

THE BATTLE OF THE PLATE

THE busy lawyer should not read this and the serious student must not read it. By and large, nobody should read it except the dilettante who is tired of reading the Law Reports as they should be read. For we have just made a resolution and it is this—that we will have nothing more to do with the law. We will down tools and strike privately: good practice, we think, for the great day of the solicitors' strike, when munching our breakfast in bed we read in the morning's paper that troops have just moved into our offices to shift the first load of immobilised contracts and conveyances. In brief, we shall read the Law Reports for diversion, and not as hitherto against the clock, irked the while by a growing suspicion that one is up the creek without a paddle.

Let us start then with *Cameron* v. *Wiggins* [1901] 1 Q.B. 1. And a lucky start too, you might say, for it is arguable that [1901] Q.B. (confusingly advertised as K.B. on the spine, which no doubt it was by the time it went to press) compares unfavourably for the purpose in hand with, say, *Punch's Almanack* for that year. This may explain why the learned editors have given *Cameron* v. *Wiggins* pride of place on page 1.

What, then, were the facts in *Cameron* v. *Wiggins*? (Don't, for heaven's sake, bother about the law: it was, I believe, something to do with the Merchandise Marks Act.)

The facts, as it happens, cannot very well be stated otherwise than in the exact words of the reporter, for, as will be seen, the slightest deviation is calculated to put one or other of the pa ties in the wrong. Rather than do that, and hoping for the best over the copyright, here—though with some interpolations—we start to quote.

On 16th March, 1900, then, the appellant (that would be Cameron) saw the respondent at his, the respondent's, shop at Blackpool, and produced to him a handbill, of which, so far as material, the following is a copy :—

" Canterbury Meat Stores,
126 Egerton Road, North Shore.
Beef, Mutton, Lamb & Pork
WIGGINS & CO.

beg to inform the inhabitants of North Shore and district that they are selling the very best chilled beef and pork, Canterbury New Zealand mutton and lamb of the very best quality at the following low prices . . .

Legs of Mutton .. 5d. and 5½d. per lb."

There were several similar handbills in the respondent's shop.

The appellant said to the respondent, at the same time producing and showing to him the handbill : " I understand you are selling New Zealand mutton. I am desirous of procuring . . . (Unquote here : it is a safe bet that what he really said was ' I want to buy,' but the litigation manager did not care for such a low-class expression.) I am desirous of procuring a leg of mutton ; my wife objects to River Plate meat. (Unquote just to let that sink in : neither the Battle of the River Plate nor Señor Peron had cast their shadows before them upon the complacent Mrs. Cameron.) My wife objects to River Plate meat and I want New Zealand mutton. Do you supply it ? " The respondent said " I do." The appellant then said " Have you got a fresh leg you can supply me with—one that will keep over the end of the week ? ". The respondent replied (and, unquoting, this is where the devil must have entered into him) " I have one in this morning—it is perfectly fresh," and upon the request of the appellant, produced to him a leg of mutton. He weighed it ; it was 7 lb. The appellant then said to the respondent " Please give me the invoice for it," and the respondent handed to him an invoice of which the following is a copy, except that the letters " N.M." were not written thereon :—

" Dr. to Wiggins & Co.
Family Butchers.
7 lbs. Leg Mttn @ 5½d. .. .. 3s. 2½d.
N.M. Paid A.S.W."

(Unquote for the discerning reader to note that " A.S.W." doubtless stood for Wiggins in person, and we fancy " N.M." for New Zealand Meat, or maybe Mutton, but that was really the whole point of the case, whereof much mystery was made, so let us get away from it at once.)

The appellant then said " You have charged me 5½d. I see " (at the same time pointing to the handbill) " you have two charges—5d. and 5½d." The respondent replied " Sometimes at the end of the week I have River Plate meat and I charge 5d. for that and 5½d. for New Zealand legs." The appellant said " Then I understand this is New Zealand mutton ? " To which the respondent replied " Yes." The appellant then said " Do you mind marking on the invoice that this is New Zealand meat, so that I can show my wife that I have bought New Zealand mutton at 5½d. and that I have not been supplied with 5d. meat at a higher price ? " The respondent then wrote upon the invoice, with intent to warrant to the appellant that the mutton was New Zealand mutton, the letters " N.M."

No evidence was offered on behalf of the appellant that the letters " N.M." have any particular indication in the meat trade.

We may unquote here, for it only remains to add that it was proved to the discomfiture of the plausible Mr. Wiggins that the mutton was *not* New Zealand mutton ; the deception was detected, we fancy, by the exacting and indignant Mrs. Cameron. Some sympathy must be spared for her, doing the regulation Gladstone chew over a generous helping of that 7 lb. of Argentine meat to which she " objected." But taking one thing with another, it is by the plight of the unhappy Mr. Cameron, so grandly described throughout as " the appellant," that one is most deeply moved. It is possible, of course, to take the cynical view that he was out to " frame " Mr. Wiggins from the start (if that is the right expression) ; and why, one may ask, was he doing the marketing in person in the year of grace 1900 if it was not for some such fell purpose as that ? But the cynics must surely bow before that all-revealing question (italics supplied) : " *Do you mind* marking on the invoice that this is New Zealand meat, *so that I can show my wife* that I have bought New Zealand mutton at 5½d. and that I have not been supplied with 5d. meat at a higher price ? " No—when it was held by Lawrence, J., on a case stated by the justices of the Borough of Blackpool, that the letters " N.M. " amounted to a trade description, I fear that for Mr. Cameron it proved but a Pyrrhic victory.

" ESCROW."

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 22nd December—

Dunoon Burgh (Pavilion Expenditure) Order Confirmation.
National Insurance.
Wireless Telegraphy (Validation of Charges).

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Blyth Generating Station (Ancillary Powers) Bill [H.L.] [21st December.
Chatham and District Traction Bill [H.L.] [21st December.
Chatham and District Water Bill [H.L.] [21st December.
Chinese Engineering and Mining Company Bill [H.L.] [21st December.
Corn Exchange Bill [H.L.] [21st December.
Dewsbury Moor Crematorium Bill [H.L.] [21st December.
Esso Petroleum Company Bill [H.L.] [21st December.
Gloucestershire County Council Bill [H.L.] [21st December.
Liverpool Corporation Bill [H.L.] [21st December.
Milford Docks Bill [H.L.] [21st December.
Monmouthshire County Council Bill [H.L.] [21st December.
North Wales Hydro-Electric Power Bill [H.L.] [21st December.
Runcorn-Widnes Bridge Bill [H.L.] [21st December.
Saint Stephen Coleman Street Bill [H.L.] [21st December.
Sevenoaks and Tonbridge Water Bill [H.L.] [21st December.
Swansea Corporation (Fairwood Common) Bill [H.L.] [21st December.
University of Hull Bill [H.L.] [21st December.

Read Second Time :—

Road Traffic Bill [H.L.] [21st December.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Bills of Exchange Act, 1882 (Amendment) Bill [H.C.] [21st December.

To amend the Bills of Exchange Act, 1882, so that endorsement of order cheques and similar instruments received for collection by the banker, of whom the payee is a customer, shall be unnecessary.

Chatham Intra Charity of Richard Watts and Other Charities Bill [H.C.] [16th December.

To confirm a Scheme of the Charity Commissioners for the application or management of certain Charities in the County of Kent.

Crofters (Scotland) Bill [H.C.] [20th December.

To make provision for the reorganisation, development and regulation of crofting in the crofting counties of Scotland; to authorise the making of grants and loans for the development of agricultural production on crofts and the making of grants and loans towards the provision of houses and buildings for crofters, cottars and others of like economic status; to re-enact the provisions of the Landholders Acts with respect to cottars; and for purposes connected with the matters aforesaid.

Read Second Time :—

National Service Bill [H.C.] [17th December.

B. Debates

Mr. George Thomas raised on the adjournment the subject of the **Chancellor's concession** by which, in the estate duty valuation of houses owner-occupied by the deceased which continue to be occupied by the beneficiaries, any increase in the market value due to vacant possession shall not be taken to be larger than it would have been before the war. He said that there was evidence that valuation officers throughout the country did not share the Chancellor of the Exchequer's expressed opinion that the concession still operated, and alleged that a change of practice had taken place, involving hardship and injustice about which the legal profession were anxious. The Chancellor had stated that the value of the concession had diminished because the premium on vacant possession had diminished or disappeared, but it was quite fallacious to suggest that vacant possession value to-day was no more than it was in 1939.

Mr. Henry Brooke, the Financial Secretary to the Treasury, said that there had been no change of policy, and no directive had been issued by the Treasury. The concession had always been intended to be a temporary one to meet a temporary situation. Building costs had risen, the value of money had changed, and in some parts of the country the housing shortage was no longer so acute. Valuers had to take into account the fact that the difference in value which the concession made had been modified by these economic circumstances.

Mr. Michael Higgs said that, while the concession had been introduced because of the post-war housing shortage, a number of other kinds of scarcity were now beginning to operate on house values, producing enhanced vacant possession values. He instanced town planning provisions which prohibited further building in "green belts," thus creating a scarcity in the belt itself and in the town which it surrounded. It might soon be time to consider whether some similar concession ought to be made by legislation, or whether the Chancellor's concession ought to be enlarged in scope, to cover these cases. [20th December.

C. Questions

Departmental Tribunals (Procedure and Practice)

Asked what steps the Government proposed to take to reform the procedure and practice of tribunals set up by Government departments and to ensure that the decisions of such tribunals were pronounced in public with the reasons therefor and to give the parties a right of appeal to a court of law, the Attorney-General said he did not think there was any need for a general reform such as was suggested, but he would look into any particular point of procedure or practice of any such tribunal that was brought to his notice. [13th December.

Lambeth County Court (Judge's Remarks)

Mr. Osborne asked the Attorney-General if he was aware of the remarks made by the Lambeth County Court judge in a case in which a woman tenant, living there since 1914, and alone, had been compelled to seek the court's protection against abuse by a Jamaican landlord, who had only arrived in this country in 1948, and what steps he proposed to take on the judge's recommendation that anyone found guilty of such practices should be returned to Jamaica.

The Attorney-General said the tenant had been given an injunction and he had no reason to think that the law was inadequate to protect other persons in the same position. He did not, therefore, propose to take any steps to implement the judge's recommendations. It would be deplorable if it were supposed that the application of the law in this country depended on the colour of a person's skin. [13th December.

Planning Appeals

Mr. Deedes gave the following figures :—

	1952	1953	1954 to end of November
Appeals received	3,441	4,456	4,752
Appeals allowed	1,251	1,013	1,235
Appeals dismissed ..	1,053	1,206	1,683
Appeals withdrawn ..	1,222	1,292	1,641

The figures given for appeals withdrawn included cases where the withdrawal was made at, or following, the inquiry or hearing and cases in which it was decided that the Minister had no jurisdiction or that no permission was required for the proposed development. [14th December.

Stamp Duty (House Purchase)

Mr. H. Brooke stated that he estimated that the cost of ceasing to levy stamp duty on purchases of houses at less than £3,000 would be £6 million a year. As to considering such a move, he said he could not anticipate the Budget statement. [16th December.

Legal Aid (Divorce or Reconciliation)

Asked to amend the Legal Aid and Advice Act, 1949, so that no person was granted legal aid in a divorce action without first having the possibility of reconciliation fully investigated, the Solicitor-General said that he did not think it would be right to impose such a requirement in the case of assisted persons and not apply it to everyone who wished to take or defend divorce proceedings. None of the legal aid committees of The Law Society was qualified to make such investigations. [20th December.

Statute Law Committee

The Attorney-General circulated the following statement about the work of the Statute Law Committee :

"I informed the House in my statement on 14th December last year of our intention to begin the big task of consolidating the statute law as to highways. Good progress has been made on that task. Preparation of the necessary Bill has made big demands on the services available but it has been possible to undertake work on four Bills which have been prepared and passed, namely, those relating to Pharmacy, the Post Office Savings Bank, Trustee Savings Banks and Summary Jurisdiction (Scotland), and on Bills now in preparation relating to burials and cremation and to sexual offences. Work was done on a Bill for consolidating the Medical Acts, and it was hoped to secure its passage during the last session, but with the principal Act nearly a hundred years old difficulty has been encountered in expressing the statute law in terms appropriate to modern practice.

Preparation of a Bill to consolidate the Food and Drugs Act was promised in debate on the amending Bill recently passed, and is now in hand. Arrangements for Bills on other subjects of smaller compass have been made and will be pursued as soon as opportunity occurs.

The principal statutory publications, namely, the Index to the Statutes, the Chronological Table and the Guide to Government Orders, will appear in April, earlier than in previous years. It is expected that the other statutory publications will also be issued earlier than last year." [20th December.

Rent Tribunals (Points of Law)

Mr. Walker-Smith asked the Minister of Housing and Local Government whether he would introduce provisions for enabling parties to proceedings before rent tribunals to require such tribunals to state a case on points of law for the consideration of

the High Court. Mr. DEEDES replied that if a tribunal exceeded its jurisdiction or misdirected itself in law action could be taken in the High Court to quash the decision, and the Minister was not, therefore, satisfied that there was a sufficient case for the introduction of special legislation on the matter.

[20th December.

DEATH SENTENCE (INSANITY)

The HOME SECRETARY stated that in s. 2 (4) of the Criminal Lunatics Act, 1884, Parliament had made provision for the course to be followed by the Home Secretary when he had reason for believing that a prisoner lying under sentence of death might be insane. In the case of Mrs. Christofi, he had followed the course provided for in that subsection and appointed three medical practitioners to examine the prisoner and inquire as to her insanity. In view of this statutory provision, it would have been quite inappropriate to refer the case to the Court of Criminal Appeal under s. 19 of the Criminal Appeal Act, 1907; and he was reinforced in that view by the opinion of the Lord Chief Justice that if the case had been so referred there was nothing that the Court of Criminal Appeal could have done.

[20th December.

LEGAL AID STATISTICS

The SOLICITOR-GENERAL stated that 23,255 applications for legal aid were received in the six months ended 30th June, 1954, and in the same period 13,555 persons received civil aid certificates.

[20th December.

WELFARE OFFICER'S EVIDENCE

Mr. HARGREAVES asked the Secretary of State for War on what grounds he issued a certificate stating that, in his opinion, it was not in the public interest that the oral evidence of a member of the Soldiers', Sailors' and Airmen's Families Association should be given in the case of *Broome* v. *Broome and Edmundson*. Mr. F. MACLEAN replied that the certificate was issued to preserve, in the public interest, the confidential character of interviews between welfare officers on the one hand and soldiers and their wives on the other. Soldiers and their wives could not be expected to speak freely if they knew that anything they said might later be given in evidence in legal proceedings.

[21st December.

OVERSEAS TAX CREDITS

Mr. R. A. BUTLER stated that, in the computation of double taxation relief, credit for overseas tax was allowable under the law only where the tax was similar to United Kingdom income tax or profits tax. He was not aware that credit had been given for any tax not falling within that description.

[21st December.

TAXATION OF INTEREST ON COMPENSATION UNDER TOWN AND COUNTRY PLANNING ACTS

Mr. R. A. BUTLER stated that interest on compensation under the Town and Country Planning Acts, which became payable only when the compensation was discharged, would rank for income tax purposes as income of the year in which it was paid, and tax would be deductible at the standard rate for that year. As regards sur-tax, s. 238 of the Income Tax Act, 1952, contained provisions under which a measure of relief, on a basis broadly equivalent to spreading the interest, could be claimed if the receipt of the accumulated interest increased the recipient's sur-tax liability for the year in which the interest was paid by more than 5 per cent. over what it would have been if one year's interest only had been received in that year.

[21st December.

INCOME TAX (UNDER-ASSESSMENT INVESTIGATIONS)

Mr. H. BROOKE stated that 30,000 intended investigations into under-assessment of income tax, both on profits and untaxed interest, were now awaiting attention. [22nd December.

STATUTORY INSTRUMENTS

Central Land Board Payments (Scotland) Regulations, 1954. (S.I. 1954 No. 1678 (S. 185).) 5d.

Chester (Repeal of Local Enactments) Order, 1954. (S.I. 1954 No. 1672.)

County Court (Amendment No. 2) Rules, 1954. (S.I. 1954 No. 1675 (L. 20).) 5d.

These rules, which come into force on 10th January, (1) enable an order to be made, on the application of a judgment creditor, for the debtor to attend for oral examination on the hearing of the judgment summons; (2) increase compensation to witnesses for loss of time.

County of Cumberland (Electoral Divisions) Order, 1954. (S.I. 1954 No. 1661.)

County of Inverness (Abhuinn Mhor-Loch Uisge Barra) Water Order, 1954. (S.I. 1954 No. 1642 (S. 180).) 5d.

County of Oxford (Electoral Divisions) Order, 1954. (S.I. 1954 No. 1662.)

Dee and Don River Purification Board (Area and Establishment) Order, 1954. (S.I. 1954 No. 1649 (S. 181).) 6d.

Diseases of Animals (Licensing of Waste Food Sterilisation Plant) Order, 1954. (S.I. 1954 No. 1689.) 6d.

Education Authorities (Scotland) Grant (Amendment No. 5) Regulations, 1954. (S.I. 1954 No. 1659 (S. 184).)

Exchange Control (Authorised Depositaries) (No. 2) Order, 1954. (S.I. 1954 No. 1636.) 5d.

Exchange Control (Declarations and Evidence) Order, 1954. (S.I. 1954 No. 1635.)

Firemen's Pension Scheme (No. 2) Order, 1954. (S.I. 1954 No. 1663.) 5d.

Flax and Hemp Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 1643.) 6d.

Import Duties (Drawback) (No. 10) Order, 1954. (S.I. 1954 No. 1654.)

Jurors' Allowances (Scotland) Regulations, 1954. (S.I. 1954 No. 1650 (S. 182).) 5d.

Keg and Drum Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 1655.)

Kitchen Waste (Licensing of Private Collectors) Revocation Order, 1954. (S.I. 1954 No. 1690.)

Local Land Charges (Amendment) Rules, 1954. (S.I. 1954 No. 1677.)

These rules provide for the registration in Part III of the Local Land Charges Register of notices under s. 28 or s. 57 of the Town and Country Planning Act, 1954.

London Traffic (Prohibition of Waiting) (Slough) (Amendment) Regulations, 1954. (S.I. 1954 No. 1657.)

Marriage (Prescription of Forms) (Amendment) Regulations, 1954. (S.I. 1954 No. 1644.)

Merchant Shipping (Crew Accommodation) (Amendment) Regulations, 1954. (S.I. 1954 No. 1660.) 5d.

Petty Sessional Divisions (Hertfordshire) Order, 1954. (S.I. 1954 No. 1641.)

Police (Discipline) Regulations, 1954. (S.I. 1954 No. 1687.)

Police (Discipline) (Deputy Chief Constables, Assistant Chief Constables and Chief Constables) Regulations, 1954. (S.I. 1954 No. 1688.)

Police (No. 2) Regulations, 1954. (S.I. 1954 No. 1686.)

Rope, Twine and Net Wages Council (Great Britain) Wages Regulation (Holidays) (Amendment) Order, 1954. (S.I. 1954 No. 1656.) 5d.

Safeguarding of Industries (Exemption) (No. 12) Order, 1954. (S.I. 1954 No. 1683.)

Safeguarding of Industries (List of Dutiable Goods) (Amendment No. 7) Order, 1954. (S.I. 1954 No. 1648.)

Sheriff Courts (County of Argyll) Order, 1954. (S.I. 1954 No. 1658 (S. 183).)

Stopping up of Highways (Bristol) (No. 3) Order, 1954. (S.I. 1954 No. 1667.)

Stopping up of Highways (Kingston-upon-Hull) (No. 3) Order, 1954. (S.I. 1954 No. 1671.)

Stopping up of Highways (London) (No. 47) Order, 1954. (S.I. 1954 No. 1668.)

Stopping up of Highways (London) (No. 48) Order, 1954. (S.I. 1954 No. 1670.)

Stopping up of Highways (Norfolk) (No. 4) Order, 1954. (S.I. 1954 No. 1669.)

Teachers Superannuation (Accepted Schools) Amending Scheme, 1954. (S.I. 1954 No. 1676.)

Therapeutic Substances Amendment Regulations, 1954. (S.I. 1954 No. 1645.) 6d.

Therapeutic Substances (Control of Sale and Supply) Regulations, 1954. (S.I. 1954 No. 1646.)

Therapeutic Substances (Supply of Oxytetracycline for Agricultural Purposes) Regulations, 1954. (S.I. 1954 No. 1647.) 5d.

Town and Country Planning (Compensation) (Scotland) Regulations, 1954. (S.I. 1954 No. 1679 (S. 186).) 6d.

Trowbridge, Melksham and District Water Board Order, 1954. (S.I. 1954 No. 1637.) 5d.

West Hampshire Water Order, 1954. (S.I. 1954 No. 1666.)

Wolverhampton (Repeal of Local Enactments) Order, 1954. (S.I. 1954 No. 1665.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Company—"Special Business"—Whether Special Resolution Required

Q. An exempt private company has obtained the Capital Issues Committee's consent to increase its capital by means of a free issue of fully paid-up bonus shares. There is only one class of shares. The company is authorised (by art. 34, Table A, 1929) to increase its share capital by ordinary resolution, and this power is reproduced in art. 44 of Table A, 1948. It is intended to seek the approval of the shareholders at an extraordinary general meeting and the company's articles provide that "all business shall be deemed special that is transacted at an extraordinary meeting." (1) Does it follow that the transaction of this "special business" at an extraordinary general meeting requires a special resolution of the members, or will an ordinary resolution suffice? (2) Will fourteen days' notice of meeting be appropriate?

A. An ordinary resolution suffices and fourteen days' notice (exclusive of the date of service and the date of the meeting) is the appropriate period of notice. It is presumed that the articles of association include provision for the capitalisation of profits and reserves and that for this purpose an ordinary resolution is required. If the articles do not include the necessary provision, there should be a special resolution altering the articles in this respect, and of course in that case twenty-one days' notice would be necessary. It is certainly confusing that in company practice the word "special" is used in different and irrelevant phrases. Neither "special business" nor "special notice" is a phrase implying the necessity of a "special resolution."

Assent—Whether Memorandum of Assent by Executors of Proving Executor Who Died should be Indorsed on Both Grants

Q. W H W purchased Whiteacre in May, 1925. He died in 1944 and probate of his will was granted to his wife, *M L W* (the sole beneficiary and executrix) in May, 1945. No assent was made and, *M L W* having died in November, 1946, probate was granted in January, 1947, to her personal representatives, who as personal representatives of *M L W* in October, 1947, assented to the property vesting in *A L W*. There were acknowledgments for production of both probates, but there is no record of any memoranda. My client *X* is now acquiring Whiteacre. Should not a memorandum of the assent have been made on both probates?

A. We consider that a memorandum of the assent should have been indorsed on the grant of probate of *M L W's* will and that the purchaser can insist upon this being done. It seems to us implicit in the decision in *Re Miller and Pickersgill's Contract* [1931] 1 Ch. 511 (where it was held that the indorsement of memoranda entitled a purchaser to an acknowledgment for production of a grant of representation) that a vendor in whose favour an assent has been made cannot show a good title without such an indorsement. Whether it is possible to require an indorsement on the probate of *W H W's* will is, however, doubtful, since, *M L W* having died, no assent or conveyance by her can now be made and a purchaser from her personal representatives will to that extent be protected.

Landlord and Tenant—Licence to Erect Television Aerial

Q. We have been instructed to prepare a short agreement between a landlord-client and her tenant to cover the erection by the tenant on a part of the property retained by the landlord of a television aerial. It seems to us that the agreement should be in the form of a licence terminable on a week's notice providing that the tenant shall make good all damage caused by the erection, maintenance and removal of the aerial and shall indemnify the landlord in respect of all actions, proceedings, costs, claims and demands in any way arising out of the erection, maintenance or removal of the aerial. Can you kindly direct us to a suitable precedent?

A. We are not aware of any existing form of precedent which would exactly meet the case, but we suggest that considerable assistance would be afforded by a study of No. 32 in vol. VI (Easements) of the Encyclopædia of Forms and Precedents, which is a form of licence to erect and maintain a standard for the support of telephone wires, combined with a perusal of No. 14 in vol. VIII (Landlord and Tenant) which expresses a right granted to affix trade signs on the outside of premises. Reference might also be made to the 1954 Supplement, VI, 1 (Miscellaneous Forms) relating to an air-raid shelter.

Housing Repairs and Rents Act, 1954—Applicability—Premium—Contractual Tenancy

Q. A client of ours is the tenant of a flat within the Metropolitan Police District, the rateable value of which is £45. She holds under a fourteen-year lease which does not expire until 1961. The lease was granted in 1947 in consideration of the payment of a substantial premium, but the landlords assure us that the rent reserved by the lease is no more than the full recoverable rent of the flat as at the date when the lease was granted. The landlords contend that for the purposes of s. 23 of the Housing Repairs and Rents Act, 1954, the flat is let under a controlled tenancy as defined by s. 49 (1) of the Act, namely, a tenancy to which the Act of 1920 applies. In our view, the 1920 Act does not operate to protect tenants until their original contractual tenancy is brought to an end, either by effluxion of time or by service of notice to quit. In our opinion, the 1920 Act will not apply to our client's flat until her lease expires in 1961, and consequently the landlords are not entitled to increase her rent, or to have any of the other benefits conferred on them by the new Act.

A. In our opinion, the tenancy is one "to which the Act of 1920," which means the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies, unless the rent is less than £30 per annum, in which case s. 12 (7) of that Act would exclude it. The application of the Act is dealt with by s. 12 (2), and this indicates the scope of the protection against increases of rent and eviction afforded to tenants of the houses within the rent and rateable value limits named. We also consider that the repairs increase introduced by the Housing Repairs and Rents Act, 1954, is recoverable, when recoverable, from contractual tenants, and that the position contrasts with that created by the increase of rent provisions of the 1920 Act. The concluding words of s. 23 (1) of the 1954 Act are: "would be recoverable from the tenant under the terms of *the tenancy or statutory tenancy* and having regard to the provisions of any enactment." Without much confidence in its validity, we would point, for what it is worth, to a possible argument on these lines: the facts suggest that the flat was once let at a higher rent (presumably no premium was paid on that occasion), and it could be contended that the present rent is less than "the rent recoverable from the tenant," especially if the "having regard to the provisions of any enactment" at the end of s. 23 (1) be read as qualifying these words as well as later words. If the same were applied to "rent recoverable" in s. 24 (1), the "stopper" might operate in this case.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to appoint Colonel KENNETH JAMES PRIESTLEY BARRACLOUGH, O.B.E., T.D. (T.A.R.O.), to be a Metropolitan Magistrate with effect from 17th December, 1954.

Mr. O. C. BARNETT has been appointed Vice Judge Advocate-General in succession to Sir Frederick Gentle, Q.C.

Mr. ARTHUR W. W. BRIGHT, F.R.V.A., has been appointed President of the Rating and Valuation Association for the year 1954–55.

Mr. GEOFFREY HOCKIN, assistant solicitor at South Shields, has been appointed to a similar post at Weston-super-Mare.

Mr. SYDNEY G. TURNER, Q.C., has been elected Master Treasurer of the Middle Temple for 1955.

Mr. E. R. LA T. WARD, Puisne Judge, Trinidad, is to be Chief Justice of British Honduras in succession to Sir Alfred Crane, who is retiring.

Mr. S. F. WARREN has been appointed town clerk, South Molton Borough Council, in succession to Mr. WILLIAM ARTHUR COKAYNE FRITH, who is resigning to become clerk to the new Petty Sessional Division of South Molton.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On 9th December, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of JOHN MORGAN JENKINS, of 171-173 and 191 Rushey Green, Catford, London, S.E.6, and 99 High Street, Eltham, S.E.9, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

On 9th December, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that PETER HOYLE WHITE, of 26 Netherhall Road, Doncaster, in the county of York, be suspended from practice as a solicitor for a period of two years from the date of the Order and that he do pay to the applicant his costs of and incidental to the application and enquiry.

On 9th December, 1954, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of CONRAD HAMPDEN DRAYTON, of Pine Cottage, Portishead, Somerset, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

At The Law Society's Final Examination, held on 1st, 2nd, 3rd and 4th November, 1954, of the 418 candidates who entered the examination, 241 passed. The Council have awarded the John Mackrell Prize (value £15) to Frederic Haas, LL.B., B.Sc. (London).

OBITUARY

MR. A. B. ARIS

Mr. Arthur Benjamin Aris, solicitor, of Shrewsbury, died on 12th December, aged 73. He was a former Under-Sheriff of Shropshire and Clerk to the Commissioners of Taxes, Shrewsbury Division. He was admitted in 1912.

MR. F. CLAYTON

Mr. Frank Clayton, retired solicitor, of Nottingham, died recently. He was admitted in 1907.

MR. R. S. SHUCKBURGH

Mr. Robert Shirley Shuckburgh, C.B.E., Assistant Public Trustee from 1924 to 1948, died on 16th December, aged 72. He was admitted in 1908.

MR. T. A. STUCHBERY

Mr. Thomas Alan Stuchbery, solicitor, of Maidenhead and Windsor, died on 17th December, aged 58. He was coroner at Maidenhead and a former mayor of the town, and was admitted in 1925.

MR. I. F. WARD

Mr. Ivor Fanshawe Ward, retired solicitor, of Norwich, died on 13th December. In 1912 he joined the legal staff of the Norwich Union and in 1941 was appointed senior joint solicitor. He was chairman of the Charity Trustees in Salhouse and was admitted in 1912.

SOCIETIES

The one hundred and twenty-seventh annual meeting of the INCORPORATED LAW SOCIETY OF LIVERPOOL was held at the Law Library on Friday, 17th December, 1954. The president (Mr. T. W. Harley, M.B.E.) presided and delivered an address to a well-attended meeting. The report and accounts for the past year were adopted and the following were elected members of the committee for the ensuing three years: Messrs. R. W. Abercromby, T. W. Bigge, W. R. Cafferata, G. H. Twyford, H. M. Allen, J. H. C. Byrne, R. B. Clayton, A. Lewis Jones and E. H. Weld.

The MANSFIELD LAW CLUB announce the following programme for January–May: 13th January, "English Maritime Law," by the Hon. Mr. Justice Willmer, O.B.E., T.D.; 27th January, "The Law and Crime Detection, the Development of a Half-Century," by Mr. J. P. Eddy, Q.C., sometime Stipendiary Magistrate of East and West Ham; 10th February, "Topical Secretarial Practice," by Mr. A. K. Martin, F.C.I.S.; 24th February, "The Law and Banking," by Mr. Maurice Megrah, Barrister-at-Law, Secretary of the Institute of Bankers; 10th March, "The City and the Law," by Mr. Desmond Heap, LL.D., L.M.T.P.I., Comptroller and City Solicitor of the Corporation of London; 24th March, "The Romance of the Cheque: its Origin and Development," by Mr. J. Milnes Holden, LL.B., Ph.D., Barrister-at-Law; 28th April, "Some English Commercial Judges," by Mr. Clive M. Schmitthoff, LL.D., Barrister-at-Law, M.I.Ex.; 12th May, "*De Laudibus Legum Angliae*," a discussion on English Law and Comparative Law; and 26th May, general meeting, election of officers and discussion of programme for 1955–56. Meetings are held at 6 p.m. at the City of London College, Moorgate, E.C.2. Tea is available in the buffet adjoining the hall (Room 114), for members and guests introduced by them, from 5.30 p.m. onwards. Visitors are welcome at all meetings.

THE SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme for January, 1955: 6th, Reel Club: Law Society, 6 p.m., refreshments, members 1s., non-members 1s. 6d.; 12th, Informal evening at which committee members will be At Home: followed by a talk by Mr. Henry Elam, Barrister-at-Law; 19th, Skating Party: meet downstairs in Pirates' Cabin opposite Queensway Station at 6 p.m. or afterwards on the ice at Queens Club, Bayswater; 27th, Debate: a joint debate has been arranged with King's College, London, motion: "That this House can register no London pride." Law Society, 6.15 p.m., refreshments from 5.45 p.m.

THE UNION SOCIETY OF LONDON announce the following subjects for debate in January, 1955: Wednesday, 12th, "That this House approves the Government's pension plan"; Wednesday, 19th, "That National Service is of benefit to the individual"; and Wednesday, 26th, "That this House supports the policy of the U.S.A. towards China." Meetings are held in the Common Room, Gray's Inn, at 8 p.m.

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